

Caring for the Constitution: Madison and Jefferson's Opposition to the National Bank of the  
United States

Honors Research Thesis

Presented in Partial Fulfillment of the Requirements for graduation

“with Honors Research Distinction in Political Science” in the undergraduate colleges of The  
Ohio State University

by

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June 2012

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President Barack Obama's health care reform bill has been both the most distinguishing footprint left by his administration and the most disputed. As debates over the bill surge throughout the nation, many opponents have turned to a question of constitutionality to defeat the plan. These critics of the bill use the Commerce Clause as their point of attack, while Obama's supporters affirm the bill's absolute compatibility with the clause and the Constitution. Today, federal courts are still divided over the issue, with four of the major appeals court decisions shedding little light on the overall judicial position on the law.<sup>1</sup> Meanwhile, the bill has reached the Supreme Court, and much of the nation and probably all of its politicians will tune in to hear what the Justices have to say regarding the law's constitutionality.

As the battle continues, strikingly few credible government officials or national leaders would even *think* to question the relevance of constitutionality in regards to health care reform. In this context, the debate over health care reform revolves around whether the bill is constitutional or unconstitutional, not about whether constitutionality is important. If the Supreme Court strikes down the reform as unconstitutional, no one will dare say that it should be implemented anyway. The treatment of the Constitution as a document of unmatched legal importance in American politics is a sentiment shared by the overwhelming majority and one

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<sup>1</sup> *Thomas More Law Center v. Obama* (Jun. 29, 2011) – Court rules 2-1 in favor to uphold law. *Florida v. United States Department of Health and Human Services* (Aug 12, 2011) – Court rules 2-1 to strike down the individual mandate as beyond Congress's constitutional authority. *Liberty University v. Geithner* (Sep. 8, 2011) – Court rules 2-1 to defer consideration of law until 2015. *Seven-Sky v. Holder* (Nov. 8, 2011) – Court rules 2-1 to uphold law as valid Congressional power to regulate Commerce.  
 Rice, Lewis. "Is the Obama Health Care Reform Constitutional? Fried, Tribe and Barnett debate the Affordable Care Act." *Spotlight at Harvard Law School*. Harvard Law School, 28 Mar. 2011. Web. 21 Mar. 2012. <<http://www.law.harvard.edu/news/spotlight/constitutional-law/is-obama-health-care-reform-constitutional.html>>.

that has been around for hundreds of years. But when was this sentiment born? What created the unshakeable foundation for constitutional superiority that lives in American politics today?

The first truly monumental question of legislative constitutionality presented itself in the 1791 National Bank debate. The National Bank, as envisioned by Alexander Hamilton, Secretary of the Treasury at the time, was proposed to the First Congress in 1790. His *Second Report on Public Credit*, which contained the Bank proposal, was one of three important works that unveiled Hamilton's entire economic policy, along with the 1789 *First Report on Public Credit* and late 1791 *Report on Manufactures*.<sup>2</sup> The *First Report* had argued that a funded debt (in this context, the American post-Revolutionary war debt) could be transformed into capital, and the *Second Report* recommended that this transformation be performed through a Bank.<sup>3</sup> Ultimately, Hamilton's main objective in funding the debt through the incorporation of the Bank was to "stabilize the new national government and establish its credit." In other words, he aimed to ease the investment of private capital. Hamilton's more specific hopes revolved around ambitious entrepreneurs and their ability to give the American economy a significant push. He predicted that the Bank would attract both foreign and domestic capital into the possession of these entrepreneurs, and the entrepreneurs would, in turn, invest the capital into the nation's economic growth. This sort of wealth concentration was imperative, Hamilton reasoned, in an underdeveloped frontier society like the US where manufactures were few, capital frequently diffused, and thus currency depleted. Helping to eliminate these negative traits of the American economy, concentration and mobilization of capital would "excite the industry and productivity of the American people." Likewise, it would cure a chronically unfavorable balance of trade by

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<sup>2</sup> Hamilton, Alexander. "Hamilton's Second Report on Public Credit." *Select Documents Illustrative of the History of the United States 1776*. By William MacDonald. N.p.: Ayer Publishing, 1969. 61-66. *Google Books*. Web. 21 Mar. 2012.

<sup>3</sup> Hamilton, Alexander. "Hamilton's First Report on Public Credit." MacDonald 46-58.

encouraging export production.<sup>4</sup> Finally, it would act as both a source of emergency loans and a depository of funds.<sup>5</sup>

Hamilton's constitutional justification for the Bank derived from Article 1, Section 8, which gave Congress the power "to borrow Money on the credit of the United States." He reasoned that the Bank itself would supply these loans. Although no explicit power allowed Congress to establish such a Bank, Hamilton looked to the Necessary and Proper Clause of Article 1, Section 8 for constitutional justification: Congress would have the right "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers," which included the aforementioned power to borrow money.<sup>6</sup>

However, the Bank proposal met fierce opposition from Secretary of State Thomas Jefferson and Virginia Congressman James Madison. Their criticisms revolved around two major points of contention: They viewed the Bank as economically corrupt and unsound, and they viewed it as unconstitutional in the context of the Necessary and Proper Clause.

Madison found abundant economic flaws with the Bank bill. He asserted two particular disadvantages in his 1791 speeches to Congress: The Bank would abolish precious metals as the basis for currency by substituting another financial medium for them, and it would expose the American people to the risk of a run on the Bank. Moreover, what troubled Madison even more was that these evils would be unleashed onto the public in the form of an eleven-year Bank

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<sup>4</sup> McCoy, Drew R. "The Specter of Walpole." *The Elusive Republic*. Williamsburg: The University of North Carolina Press, 1980. 147-148. Print.

<sup>5</sup> Staloff, Darren. "Alexander Hamilton: The Enlightenment Fulfilled." *Hamilton, Adams, Jefferson*. New York: Hill and Wang, 2005. 97. Print.

<sup>6</sup> Brookhiser, Richard. "The First Political Party." *James Madison*. New York: Basic Books, 2011. 92. Print.

charter, which was much too lengthy for his liking.<sup>7</sup> Yet just like Jefferson, Madison aimed the majority of his publically voiced opposition to the Bank at its unconstitutionality. He claimed that constitutionally granted Congressional power to borrow did not imply the power to charter a bank to make loans.<sup>8</sup>

For Jefferson, the Bank effectively represented the evils that he attributed to all banks of note issue (rather than gold issue). Instead of helping people succeed, banks preyed on people, put them into debt, and supported luxury and extravagance.<sup>9</sup> In short, banks did not create capital, as bank proponents claimed, rather they diverted it from virtuous agricultural pursuits<sup>10</sup> Ultimately however, Jefferson joined Madison in choosing the unconstitutionality of the Bank as his point of attack. Claiming unconstitutionality, Jefferson complained that to treat the establishment of the Bank as an “implied” power with regard to the Necessary and Proper Clause was “to take possession of a boundless field of power, no longer susceptible of any definition” or restriction.<sup>11</sup> He would commit to this argument throughout the National Bank Debate.

Hamilton’s response to Jefferson and Madison’s criticisms was as convincing as it was eloquent. He stressed the idea that granting implicit Congressional powers to create corporations, like the Bank, would not lead to unlimited Federal powers as Jefferson and Madison feared. He offered the example that Congress could not incorporate a Philadelphia police department “because [it is] not authorized to regulate” the government of localities. However, since Congress *is* authorized to regulate trade and collect taxes, it could “employ all

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<sup>7</sup> Madison, James. "February 2nd - Bank of the United States." First Congress - Third Session. 2 Feb. 1791. *Online Library of Liberty*. Web. 21 Mar. 2012.

<sup>8</sup> Brookhiser 92.

<sup>9</sup> Peterson, Merrill. "Secretary of State." *Thomas Jefferson and the New Nation*. New York: Oxford University Press, 1970. 435. Print.

<sup>10</sup> Peterson 436.

<sup>11</sup> Staloff 314.

means which relate to its regulation to best and greatest advantage.” This was a clear distinction of constitutional powers for Hamilton, and incorporating a National Bank was entirely compatible with this view.<sup>12</sup>

Furthermore, legislation based on implied powers was a constitutional norm at the time. No state Constitution explicitly mentioned bank incorporation, and yet the states had managed to erect banks without restriction. The national legislature itself had often acted without explicit constitutional authority or “ironclad necessity” by creating light houses, buoys, beacons, public piers, and the like. Why should the National Bank be treated any differently when it came to constitutional validation? After all, not only states but other nations as well exercised implied powers routinely for their beneficial gains. Thus, for Hamilton, the reality was that a National Bank would not lead to unrestricted Federal powers. However, the striking down of the constitutionality of the bill would indeed suppress the potential of the federal government, and it would also run counter to existing practices.<sup>13</sup>

President George Washington was initially hesitant to sign the Bank bill, and asked his cabinet members to submit opinions on the matter. Jefferson wrote a solid opinion but was outdone by Hamilton’s swift 15,000-word response. Washington was convinced. He signed the bill into law on April 25, 1791, much to the dismay and horror of Madison and Jefferson.<sup>14</sup>

Historians and political scholars alike tend to take the same approach toward analyzing Jefferson and Madison’s opposition to the National Bank. This approach asserts that Jefferson and Madison’s strongest and most significant genuine criticism of the Bank was that they viewed it as unconstitutional. This idea demonstrates the common historical belief that Madison and

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<sup>12</sup> Staloff 118.

<sup>13</sup> Staloff 118-119.

<sup>14</sup> Peterson 434; Brookhiser 93.

Jefferson were legal supporters of an enumerated powers approach to constitutional interpretation in the National Bank Debate. Examples of this majority historical opinion can be found in the writings of Merrill Peterson, Richard Brookhiser, James Roger Sharp, Richard Hofstadter, Gordon Wood, and many of their esteemed colleagues. Generally, historians group Madison and Jefferson's concerns with Hamilton's Bank under the umbrella of constitutional criticism. The following are examples of the way in which scholars characterize Madison and Jefferson's opposition:

"It was precisely on this ground [constitutionality] that Madison fought the Bank Bill in Congress and that Jefferson, upon its passage, sought its defeat at the hands of the President."<sup>15</sup>

"In his report, Madison let all the Republican Party's hobby horses out for a ride. Hamilton's Bank of the United States and his Report on Manufactures were as unconstitutional as the Alien and Sedition Acts."<sup>16</sup>

"Jefferson, of course, never gave up his hostility to banks, and he saw in the Bank of the United States, which he still believed to be unconstitutional, a rival political force of great potentiality."<sup>17</sup>

Even when scholars grant the possibility that Madison and Jefferson had other worthy concerns with the Bank, they typically do so under the assertion that these other concerns were not as significant: "Both Virginians, although they primarily opposed the Bank on Constitutional grounds, were also disturbed by what the establishment of the Bank seemed to represent..."<sup>18</sup>

In fact, a quantitative investigation of how much time historians devote to these characterizations paints a telling picture. I have recorded numerous historical accounts of Madison and Jefferson's opposition to the Bank, and it is clear that prominent scholars like Staloff, Brookhiser, Peterson, and Wood devote much more time to constitutional criticisms

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<sup>15</sup> Peterson 433.

<sup>16</sup> Brookhiser 144.

<sup>17</sup> Hofstadter, Richard. "The Transit of Power." *The Idea of a Party System*. Berkeley: University of California Press, 1969. 159. Print.

<sup>18</sup> Sharp, James Roger. "Breakdown of Elite Consensus, 1789-1792." *American Politics in the Early Republic*. New Haven: Yale University Press, 1993. 38. Print.

made by Madison and Jefferson rather than concerns of any other kind. To illustrate this, I aim to show the contrast between how many paragraphs these authors allow for describing constitutional criticisms as opposed to other qualms. If a paragraph includes both constitutional and non-constitutional reasons of opposition, I did not count it barring one exception: if the author explicitly states that constitutional concerns were primary. In these cases, I added the paragraph to the count of described constitutional opposition (i.e. Sharp's "The major objection he raised, however... was a constitutional one" p. 39). I did not find any examples of an author describing both constitutional and non-constitutional opposition with an explicit affirmation that the non-constitutional concern was primary. This quantitative analysis shows that Staloff devotes 11 paragraphs to Madison and Jefferson's constitutional arguments and only 2 to other concerns. Brookhiser allows 4 paragraphs to the former and only 1 to the latter. Peterson writes 5 paragraphs about constitutional criticisms and only 2 about other claims, and Wood's score is 4-0 in favor of constitutional arguments as well. Therefore, just among this sample of four highly-esteemed scholars of American history, there are 24 paragraphs describing Madison and Jefferson's opposition to Hamilton's Bank as being primarily constitutional, while only 5 paragraphs outline other concerns.<sup>19</sup>

However, when taking a step back to look at the big analytical picture, this common belief calls many ideas into question. The Constitution was an extremely young document in 1791, and it would perhaps be hasty to simply assume that Madison, Jefferson (who was not even present at the Constitutional Convention), and their colleagues were tremendously committed to all of its various facets as a source of supreme national legal power. This is not to say that they would not be entirely devoted to its major fundamental freedoms and rights. Yet a

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<sup>19</sup> Staloff 97-98, 116-119, 310, 314; Brookhiser 91-93, 144; Peterson 432-436, 701; Wood 98-99, 143-145.



total devotion to or a particular interpretation of something like the Necessary and Proper Clause would not necessarily be a forgone conclusion, especially for someone like Jefferson who proposed that the Constitution be rewritten every 20-30 years. If Madison and Jefferson thought the Bank to be corrupt and economically unsound, why would they choose to dwell so much on the fact that it was unconstitutional? Would it not be smarter to point out its economic and philosophical deficiencies, which many people would arguably care more about than the idea that the Bank defied an enumerated powers interpretation of a yet untested Constitution?

Of course, historians and scholars believe that Madison and Jefferson cared so much about the Bank's unconstitutionality because this is what Madison and Jefferson themselves reiterated so often in speeches and writings. But any thorough historical analyst knows to look past the surface of what these political leaders were saying and deep into what their true intentions were. The reality is that in 1791, Madison and Jefferson had two available paths of opposition against the Bank: the political-economic path and the legal path. They chose the legal path, which is surprising given the strength of the alternative and the potential controversiality of the topic of constitutional legality of the Bank. Yet many scholars seem to ignore this curious choice and faithfully trust that strict constructionism was the core principle of Madison and Jefferson's intentions.

A more thorough investigation of the National Bank Debate merits a reconsideration of the modern historical analysis and, ultimately, a modification. In reality, constitutionality was neither Madison nor Jefferson's greatest qualm about the Bank, nor was it as important to them as their fears of the Bank's corruptive and economically unsound consequences. In fact, they were not legally committed to the Constitution in the context of the Bank debate nearly to the extent that historians claim. This is not to say that they were not dedicated to fundamental

constitutional principles and freedoms. This thesis certainly does not make such a bold and exaggerated assertion. However, it does assert that Madison and Jefferson were not sincere legal proponents of an enumerated powers interpretation of the Necessary and Proper Clause *as it pertained* to the Bank bill. In this context, an enumerated powers approach was rather an instrumental means to an end, not Madison and Jefferson's fundamental goal. Their true goal was to build a political-economic framework for their respective, ideal American republics. Both Madison and Jefferson's plans for the future absolutely required an enumerated powers interpretation, or else this ideal republic would fall apart economically. They also needed to convince their audience, President Washington, of the Bank's deficiencies and probably thought it more prudent to do so through legal arguments. Consequently, they needed Washington to ensure that the enumerated powers view in constitutional interpretation emerged victorious in the National Bank Debate and that a Hamiltonian implied powers view would die with the Bank bill.

Therefore, I will argue that Madison and Jefferson's claims of unconstitutionality against the National Bank did not represent their true, significant, ideological qualms with Hamilton's Bank bill nor a deep legal commitment to an enumerated powers approach to the Necessary and Proper Clause; instead they represented Madison and Jefferson's knowledge of their audience and their personal desires to promote the enumerated powers approach as an instrumental policy in light of their ultimate political and economic goals.

If Madison and Jefferson's opposition to the Bank centered on a disingenuous claim for unconstitutionality, the implications for today's constitutional discussion would be significant. The National Bank debate was one of the first truly noteworthy disputes regarding the constitutionality of a piece of legislation. As a momentous historical event, it influenced the amount of weight that the modern American government places on constitutionality. If Madison

and Jefferson were insincere in their calls for an enumerated powers interpretation, today's strong emphasis on the Constitution as a legal pinnacle – although justified – may be based on a false understanding of history.

### **Context for the Debate and the Opposition's Arguments**

In understanding the National Bank Debate and why certain aspects of it were surprising, one must first understand its context. This includes the prevalent economic and constitutional theories, as well as the sectional divides that existed in the United States at the time. In practical terms, Madison and Jefferson did not just stand on the opposing side of Hamilton in relation to the Bank, but also to his general economic and legal approaches to running the American republic. It may be useful to distinguish between the two main areas of disagreement between these men. The first is the political-economic realm, where Jefferson and Madison fought tooth and nail for a virtuous America and against what they viewed as Hamilton's industrial sinkholes of corruption and fraud. Meanwhile, Hamilton had no qualms about discarding the classical republican concept of virtue in order to strengthen the American economy in the best way he saw fit: manufactures.

The second realm of conflict between Hamilton and his two adversaries was the legal arena. Here, Hamilton called for an implied powers interpretation of the Constitution while Madison and Jefferson feared that this view would lead to the worst kinds of unlimited Federal power.

Why would Madison and Jefferson use the second realm of legal reasoning to attack Hamilton's Bank when the first political-economic arena would be relevant in a society constantly torn between the economic virtues of the past and modern commercialism? Were

they sincere in making this choice, or were their legal constitutional criticisms of the Bank a mask for their true political-economic convictions?

### *Economic Context – The Spectrum*

During the National Bank Debate, the political model widely held to be most effective for a nation of free men, rid of any tyrannical oppression, was republicanism. Many versions of republicanism entered political and economic discussion, and men of various beliefs proclaimed themselves to be republicans. Yet republicanism's common denominator at all stages was the idea that freedom ultimately meant the lack of arbitrary power. A commitment against arbitrary power was crucial and could be effectively accomplished through virtuous practices aimed at achieving the public good.<sup>20</sup> This assertion also had implications in the economic realm as well as on the political-economic policies that Madison, Jefferson, and Hamilton individually supported.

In the ancient world, the word "Free," in a republican sense, described a particular social class – men who were not slaves or serfs. The word also referred to the type of virtue and character these men were supposed to reflect. Ultimately, a "Free Man" was independent and self-sufficient. Ancient Greco-Roman society saw freedom as an extremely exclusive privilege. Subordinate classes of men (serfs, slaves) supposedly lacked the ability to be virtuous. Moreover, they regularly performed commercial and menial labor – work that killed virtue and corrupted the individual. Thus, only men who did not shoulder the burden of this corruptive

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<sup>20</sup> MacGilvray, Eric. "Republican Freedom." *The Invention of Market Freedom*. New York: Cambridge University Press, 2011. Print.

labor – or free men – could truly possess the type of virtue that classical republican ideals required.<sup>21</sup>

As history wound its way into the eighteenth century, different interpretations of republicanism had a massive effect on scholars' and politicians' perceptions of rapidly commercializing society. Thinkers like Rousseau and Jefferson looked to ancient Roman history for guidance on how to preserve republican liberty and avoid tyranny. Under the right set of conditions for political institutions, these men believed, the classical republican ideal of a virtuous citizenry working for the public good was still very much possible even in a society bent on industrialization and manufactures; commercialized society would have to be severely regulated with the republican virtuous end in mind. Montesquieu, Smith, and Hamilton disagreed with this approach. They thought that a reliance on ancient history for lessons on republicanism was useless because modern commercial societies confronted entirely different challenges than those of ancient Greece and Rome. It was in these new challenges of the eighteenth century that Hamilton, for example, looked for commercial resources that would enhance a republican character within the US by freeing it from a dependence on foreign economic powers.<sup>22</sup>

For the purposes of this thesis, it is useful to locate Madison, Jefferson, and Hamilton on a political spectrum of republican thought. Jefferson was a man whom it is best to describe as a traditional republican – one who valued agrarian virtue over commercial industrialization and desired autonomy and freedom for agricultural producers from the Northern cities of the manufacturers. These cities Jefferson saw as corrupt and fraudulent, and their control over agrarian economic virtue was exactly the type of arbitrary power he wished to avoid. In this

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<sup>21</sup> MacGilvray 84-87.

<sup>22</sup> MacGilvray 90-91.

sense, Jefferson subscribed to the classical republicanism of ancient Greece and Rome described above. He also borrowed much of his ideology from the doctrine of physiocracy, as described by Ronald Meek:

“The Physiocrats’ main aim was to illuminate the operation of the basic causes which determined the general level of economic activity. For this purpose, they believed that it was useful to conceive economic activity as taking the form of a sort of ‘circle,’ or circular flow as we would call it today... Within this circle, the Physiocrats then endeavoured to discover some key variable, movements in which could be regarded as the basic factor causing an expansion or contraction in the ‘dimensions’ of the circle, i.e. in the general level of economic activity. The variable they hit upon was the capacity of agriculture to yield a net product.”<sup>23</sup>

Agriculture and agriculture alone yielded this net product, was morally and politically superior to all other forms of economic output, and thus made land the most indispensable commodity in the physiocratic system.<sup>24</sup>

Hamilton stood on the other end of the republican spectrum. He was not concerned with battling corruption to preserve virtue. To rescue the country from succumbing to arbitrary power in the form of foreign market control, Hamilton aimed to strengthen the economy through manufactures and an elaborate system of debt relief, which of course included the incorporation of a National Bank. “In many respects, Hamilton was an anomaly... he had succeeded in discarding the traditional republican heritage that had so heavily influenced the Revolutionary mind.”<sup>25</sup> If America could stand its ground against foreign competitors in international trade as a result of its prosperous economy, Hamilton did not so much care if this economy was built on a somewhat corrupt foundation. A focus on agricultural virtue could be enough to sustain an American economy, but Hamilton wanted economic glory and firm independence from foreign economic influence, which required a more industrialized approach. These were republican

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<sup>23</sup> Meek, Ronald. "Introduction." *The Economics of Physiocracy*. Cambridge: Harvard University Press, 1963. Print.

<sup>24</sup> Meek 18-19.

<sup>25</sup> McCoy 132.

goals in themselves, although they lay on a different part of the republican political spectrum than Madison and Jefferson's.

Madison fell somewhere in the middle of these two adversaries on the spectrum of republican thought. He certainly embraced economic prosperity in the form of manufactures, but he dreaded the destruction of agrarian principles. He also battled ambivalence toward the economic theory that was rising in dominance in America: mercantilism. Although Madison claimed that he wished to free America from the oppression of mercantilism, he nonetheless espoused a highly mercantilist policy of commercial discrimination in foreign trade. As he tried to reconcile these opposing motivations, other theorists, too, considered and rejected mercantilist principles.

#### *Economic Context – Discourse Leading up to 1791*

In the late eighteenth century, mercantilism posed a heavy challenge to traditional agrarian principles of republicanism. Philipp Wilhelm von Hornick comprehensively summarizes its nine major tenets:

- That every inch of a country's soil be utilized for agriculture, mining or manufacturing.
- That all raw materials found in a country be used in domestic manufacture, since finished goods have a higher value than raw materials.
- That a large, working population be encouraged.
- That all export of gold and silver be prohibited and all domestic money be kept in circulation.
- That all imports of foreign goods be discouraged as much as possible.
- That where certain imports are indispensable they be obtained at first hand, in exchange for other domestic goods instead of gold and silver.
- That as much as possible, imports be confined to raw materials that can be finished [in the home country].
- That opportunities be constantly sought for selling a country's surplus manufactures to foreigners, so far as necessary, for gold and silver.
- That no importation be allowed if such goods are sufficiently and suitably supplied at home.<sup>26</sup>

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<sup>26</sup> Ekelund, Robert B. and Robert F. Herbert. *A History of Economic Theory and Method*. Long Grove: Waveland Press, 1997. 40-41. Print.

“To more and more Americans the traditional mercantilist assumption that manufactures were necessary to maintain industry and full employment, heretofore considered relevant only to Europe, seemed suddenly and ominously relevant [in America],” explains Drew McCoy.<sup>27</sup> In fact, according to William Appleman Williams, “the central characteristic of American history from 1763 to 1828 was the development and maturation of American mercantilism.”<sup>28</sup> It is easy to confuse America’s rebellion against Britain as a rebellion against mercantilism as well, but this would be a mistake. In truth, post-revolutionary American hopes for empire actually stemmed from mercantilist inclinations acquired from and maintained after British colonial rule.<sup>29</sup>

Mercantilism was a crucial tenet for people like Madison who worked within a nationalistic framework to build a balanced, dynamic, agricultural, and commercial economy based on capitalism. “Whether agrarian or urban, mercantilists were essentially nationalists who strove for self-sufficiency through increased domestic production and a favorable balance of trade,” says Williams. Self-sufficiency was another political element that constituted an essential republican goal of freedom from arbitrary power. Mercantilists concentrated on production along with the regulation of export markets and sources of raw material. Thus, their focus shifted from consumption and economic interdependence, to fears of deficits as an indicator of economic crisis. This can be seen in Madison’s commercial discrimination policy that fervently aimed to restore a favorable balance of trade for the US and to control foreign export markets by opening up more “natural” channels for American trade. Export more and import less, mercantilists said, and it seemed as though America listened.

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<sup>27</sup> McCoy 106.

<sup>28</sup> Williams, William Appleman. "The Age of Mercantilism." *The William and Mary Quarterly* 3 ser. 15.4 (1958): 419. Print.

<sup>29</sup> Williams 421.



Yet many economists did not listen but rather rebelled against mercantilism and traditional agrarian-focused republicanism both, and with a vengeance. Philosophers like Adam Smith and David Hume asserted that the pursuit of individual private interest was the best and most efficient method of enhancing the public good (instead of the republican pursuit of collective societal virtue). Hume encouraged the pursuit of luxury, framing it as both an inevitable and refining human action, rather than as a degrading behavior of selfish men. The desire for luxury was an industrial stimulus, and it would be futile to try to stamp it out, while properly harnessed, it opposed indolence and encouraged men to work harder.<sup>30</sup>

Meanwhile Smith's challenges to mercantilism were also striking. He explained that the main benefit of foreign trade was not the importation of gold and silver, "but the carrying out of surplus produce for which there is no demand and bringing back something for which there is." He continued to denounce the mercantilist claim that the importation of gold and silver was necessary to maintain a strong America. Smith postulated that "The nation which, from the annual produce of its domestic industry, from the annual revenue arising out of its lands, labour, and consumable stock, has wherewithal to purchase those consumable goods in distant countries, can maintain foreign wars there," and can thus maintain its strength.<sup>31</sup>

One of Smith's greatest contributions to economic thought was his emphasis on the Division of Labor principle: the more specialized the task of each individual laborer, the greater the economic output. The establishment of this principle with respect to foreign markets directly contradicted the essential mercantilist tenet of favoring exports. Calvin Johnson explains, "once free trade replaced mercantilism as an economic philosophy... importing British woolens and

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<sup>30</sup> Hume, David. "Of Refinement in the Arts." 1742. MS.

<sup>31</sup> Adam, Smith. "Of the Principle of the Commercial or Mercantile System." *An Inquiry into the Nature and Causes of the Wealth of Nations*. London: Methuen and Co., Ltd., 1776. N. pag. Print.

other manufactured goods came to be seen as a wise decision to buy the highest quality goods at the best price abroad, rather than wasting resources doing an inferior job more expensively at home.”<sup>32</sup>

There existed also a split not simply between theoretical principles but also between geographical locations. The Northern and Southern sections of the United States were constantly at odds with each other, and these arguments stemmed from both economic disagreements and a Southern perception of commercial favoritism by the government toward the North. Jefferson was the voice of the Southern struggle against a federal government filled with the likes of Hamilton who (in his view) blatantly favored Northern manufacturers and financiers over noble Southern agricultural producers – the virtuous yeomen. Factory-run cities and corruption threatened the Southern republican character by forcing producers to become dependent on commerce and manufactures in order to participate in a swiftly industrializing American economy. This dependence led to a loss of autonomy, and the vicious cycle continued.

Moreover, the South resented the Northern condemnation of slavery. Republicanism and true civic participation required that menial labor be left to the slaves so that the free Southerners could perform their political duties unburdened. Here stood the Northerners, with Hamilton as their face, championing commercial progress and an industrialized society that they wished to impose on the South. Meanwhile, the Southerners, forced to accept dependence on the North, would even *further* have to decrease agricultural productivity and self-sufficiency by giving up slavery. This was a set of conditions that the South and Jefferson simply were not willing to accept.<sup>33</sup>

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<sup>32</sup> Johnson, Calvin H. "The Panda's Thumb." *William and Mary Bill of Rights Journal* 13.1 (2004): 33. Print.

<sup>33</sup> Sharp 22-23, 38-40, 158-159,

*The Political-Economic Discourse in 1791*

As free trade principles began to overtake mercantilist leanings, and as both challenged the predominant traditional agrarian republican theories of the past, the Founders tried to balance the young economy between modernization and a deeply ingrained commitment to virtue.

By the 1791 National Bank Debate, proponents of traditional republicanism confronted a difficult challenge in the face of new free trade and mercantilist interpretations of republicanism. They had to reconcile their support for a theory focused on the virtuous pursuit of the public good with Smithian endorsements of self-interest economics. As already mentioned, classical republicanism, throughout all of its historical stages and alterations, espoused the freedom from arbitrary power.<sup>34</sup> How could this republicanism survive in a world where Adam Smith's free market "Invisible Hand" was the epitome of an unimpeded, arbitrary power? As Drew McCoy explains, "American revolutionaries enthusiastically embraced the republican spirit of classical antiquity that expressed virtue in terms of a primitive economy, but they also seemed to realize that this spirit had to be accommodated to their own dynamic world of commercial complexity."<sup>35</sup> In a way, Thomas Jefferson became the face of this struggle. He found himself in a political arena that was hurtling through commercialization while he remained committed to agrarian virtue and anticorruption.

Merrill Peterson explains that there were many aspects of the Hamiltonian policy preferences that troubled Jefferson, and most troubling at the time were economic factors surrounding the National Bank. But besides the immoral, corrupting economic whirlwind that would surround the creation of the Bank, what Jefferson protested against the most was the

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<sup>34</sup> MacGilvray 9.

<sup>35</sup> McCoy 48.

length of the Bank charter. The enduring Bank charter would only exacerbate the sectional imbalances that would result from its policies, and it would do so for a seemingly unending eleven years. For eleven years, this Bank would serve as a helper to Northern merchant economies and as a detriment to Southern planters, farmers, and men of agrarian virtue. Jefferson was truly alarmed by these politics of inequity. He had always been plagued by the favoritism the national system afforded to Northern industry at the expense of Southern agricultural producers. The Bank would become another tipping point in favor of the North. When it came to the Bank, “Jefferson could not approve of the measure in the abstract or in the face of the Constitution; even more, he was convinced it was politically unsound, and he would not... take any responsibility for it.”<sup>36</sup>

What always made it extremely hard for Hamilton to convince Jefferson of the growing benefits for an industrialized America built on manufacturing was that – in Hamilton’s own words – Jefferson thought, as did many physiocrats of the time, that “agriculture [was], not only, the most productive, but the only productive species of industry.”<sup>37</sup> Jefferson viewed land as the only valuable economic resource, while commerce and manufactures just altered part of this value into other forms. This transformation, however, added no value of its own. Industries, Jefferson viewed as “sinkholes of vice and corruption.” In general, urban industrial development was a blight to be avoided, and if this was not possible, at least postponed. Instead of setting urban industrial development as a national objective, the country would fare better by focusing on westward expansion. In order to avoid corruptive industrial development, Jefferson first had

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<sup>36</sup> Peterson 436.

<sup>37</sup> Staloff 99.

to defeat the National Bank bill, the most “insidious engine” of Hamilton’s entire economic system that would surely lead America to its ruin.<sup>38</sup>

Hamilton’s policies, especially as seen in the Bank bill, *completely negated* the Jeffersonian vision. They would enrich northern financiers and speculators, and therefore the North – instead of the (as Jefferson saw it) virtuous agrarian South – would gain disproportionate standing in the national government; Northern urban development would draw capital away from westward agricultural expansion through the stimulation of manufactures. The moment when Jefferson realized the scope of the threat that Hamilton’s political economy posed, with the Bank serving as a microcosm of the general anti-republican character of Hamilton’s policies, was the moment when Jefferson abandoned his usually timid political presence and fully entered the conflict against the Bank.<sup>39</sup>

Although Madison ultimately took Jefferson’s side in the National Bank debate, his political-economic policy preferences were not as hostile to commercialization and industrialization as were Jefferson’s. Yet Madison was in no way a proponent of the type of commercial society Hamilton had in mind, and in some ways, he tended to revert to the republican virtue that Jefferson so passionately espoused as well. Madison had a particularly interesting set of ambitions for the young republic, preferring for America to develop across space rather than time. In other words, he believed the American economy would prosper more quickly if American producers also occupied western territories. With more land to work with, the limitations of time would not be so great to a much-expanded American economic potential of output. Madison explained, “if America could continue to resort to virgin lands while opening adequate foreign markets for their produce, the US would remain a nation of industrious farmers

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<sup>38</sup> Staloff 98-99.

<sup>39</sup> Staloff 314.

who marketed their surpluses abroad and purchased ‘finer’ manufactures they desired in return.” Madison wholeheartedly supported this form of social development – as did Adam Smith – because this was a policy that agreed with the “natural” law of the free market. The policy represented noninterference with the market, and if America could benefit economically without interference, it was taking the right approach. These Smithian economic principles were both extremely popular in post-Revolutionary America and compatible with the nation’s strain of republican thought. As described by McCoy, “Madison’s commitment to westward expansion and ‘free trade’ put him in the mainstream of republican thought at the end of the war.”<sup>40</sup>

A key tenet of Madisonian policy was to free America of the chains of British mercantilism. Yet his somewhat contradictory stance toward mercantilism reared its head when he pushed for a policy of commercial discrimination – arguably a mercantilist policy in itself. In his eyes, British actions confined American trade to “artificial channels” and denied it full access to “natural markets” such as the West Indies. According to Madison, British merchants and capital overwhelmed American trade and, thus, restricted foreign markets to American exports. This worry would continue to plague him for many years even beyond the Bank Debate. “Now as the productions of the United States, from their bulky character, employ at least ten times the tonnage which is required for the exports of Great Britain... it follows... that an undue advantage accrues to the British navigation,” he wrote to Rufus King in the Department of State, “[and] it is equally certain that the regulation actually adopted by Great Britain must have the effect of monopolizing the transportation of the whole mass of our bulky articles, whilst the most

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<sup>40</sup> McCoy 121-122.

that can be hoped by the United States will be a monopoly for their vessels of British articles not amounting to one tenth of that bulk.”<sup>41</sup>

Moreover, by diverting American trade into the aforementioned “artificial channels,” British actions threatened the honorable, American, republican character. Without “natural” channels, America could not function within a free market trade system because, within the artificial channels, producers could not find enough demand for American products. The solution was a retaliatory and discriminatory trade policy against Britain. Madison explained that this would greatly hamper British trade prowess since Britain depended so much on American trade itself.<sup>42</sup>

In order to preserve a strong republican character, Madison called for a strong Federal government (which is interesting, in light of his intense opposition to overly centralized Federal power in the context of the National Bank Debate – to be discussed later). This strong federal government would “dismantle restrictive mercantilist systems that obstructed the marketing of American agricultural surpluses.” The opening of more foreign markets through his policy of commercial discrimination would further ensure that Americans would not be compelled to pursue occupations that degraded their republican character out of economic necessity.<sup>43</sup> McCoy emphasizes the core of the conflict between Madison and Hamilton’s political-economic mindsets: “In one sense Madison was still caught between the conflicting claims of classical republicanism and modern commercial society, struggling to define and implement a variable synthesis that was relevant to the American experience. Hamilton had stepped confidently and

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<sup>41</sup> Madison, James. Letter to Rufus King. 2 Dec. 1801. *James Madison, The Writings*. By Gaillard Hunt. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

<sup>42</sup> McCoy 125.

<sup>43</sup> McCoy 131.

unequivocally into modernity.”<sup>44</sup> Yet this eagerness to enter modernity caused many of Hamilton’s adversaries, including Madison, to see him as a conspirator out to corrupt American society and destroy its republican character. Worse, Madison thought Hamilton would initiate this destruction with his desire to imitate British “forms, manners, and institutions” through American economic policies. Appalled republicans compared Hamilton to Sir Robert Walpole, who, they argued, singlehandedly corrupted British society through regularization and consolidation of the financial system. Madison was outraged by what he envisioned to be a corrupted legislature, under the control of the avaricious Hamilton, tied to an immoral economic system and reckless speculation.

Madison also saw the scope of the political ramifications that would result from Hamilton’s specific economic aspirations. Instead of allowing manufactures to grow at their own pace, Hamilton wished to subsidize, what Madison considered to be, “artificial” monopolies that would destroy private, “natural” producers and create destructive anti-republican inequalities in wealth. Thus, privileged workers’ groups would be utterly reliant on the government for their livelihoods, and this would enhance Hamilton’s corrupt and malicious influence over the nation. Ultimately, this chain of events would serve as a threat to republican ideals and a democratic government, because as Madison explained, “stock-jobbers will become the pretorian band of the Government, at once its tool and its tyrant; bribed by its largesses, and overawing it by clamours and combinations.”<sup>45</sup>

Hamilton, on the other hand, saw himself as the forward thinking savior of American political economy. He rapidly developed his economic initiatives for the nation and published

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<sup>44</sup> McCoy 134.

<sup>45</sup> Madison, James. Letter to Thomas Jefferson. 8 Aug. 1791. *James Madison, The Writings*. By Gaillard Hunt. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.



them in his *First Report on Public Credit*, *Second Report on Public Credit* (which contained the Bank proposal), and the *Report on Manufactures*. The *Report on Manufactures* eloquently encompassed his major political-economic goals through a firm defense of manufactures and a detailed prospectus for American industry. It also confirmed the sheer incompatibility of Hamiltonian and Madisonian political-economic principles.<sup>46</sup> Finally, it demonstrated Hamilton's unwillingness to completely adhere to Smithian free trade theory.

Hamilton opposed both Madison and Smith's visions for American trade in a free trade international order. Yes, free trade allowed the United States to import whatever it found necessary, but the problem lay in demand for American exports. The republic was young and could not ensure satisfactory demand for its agricultural surpluses. The severely limited nature of American access to foreign markets, caused by restrictions of the hated European mercantilism, would continue to exacerbate this problem. Instead of Madison's calls for commercial discrimination against the British (who Hamilton did not believe were as dependent on American trade as did Madison), Hamilton proposed a domestic solution. To offset agricultural surpluses, he encouraged domestic manufacture production. Government assistance would help develop native manufactures and would result in a more reliable market at home. The economy would become "faster... stronger, more balanced, [and] sectionally interdependent." Gradually, American power would become so enhanced that perhaps someday a Madisonian policy of commercial reciprocity and discrimination would become feasible. At the moment, however, Hamilton believed Madisonian commercial discrimination would only lead to "a disastrous commercial war with Britain."<sup>47</sup>

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<sup>46</sup> McCoy 148.

<sup>47</sup> McCoy 162.

Hamilton, like Smith, promoted a complex society with an intense division of labor and efficient public manufacturing, along with diverse productivity and a civilized and refined citizenry. He agreed with Smith that the division of labor was the essential element of a progressive society. However, he did not care much for Smith's worries about its dehumanizing aspects. Adam Smith had published various works about the degrading effects that immensely specialized labor can have on an individual who performs the same tasks for hours a day:

"The man whose whole life is spent in performing a few simple operations... generally becomes as stupid and ignorant as it is possible for a human creature to become. The torpor of his mind renders him, not only incapable of relishing or bearing a part in any rational conversation, but of conceiving any generous, noble, or tender sentiment, and consequently of forming any just judgment concerning many even of the ordinary duties of private life."<sup>48</sup>

Hamilton did not hold this concern. In his *Report on Manufactures*, Hamilton spoke much of "augmenting the productive powers of labor" through its division, and not once mentioned any dehumanizing aspects.<sup>49</sup> In fact, he had little patience for men who shied away from complex, progressive, economic societies because of a fear of the destruction of the republican character.

This lack of concern with virtue stemmed from his younger, developmental years when Hamilton became quite receptive to the writings of David Hume both about political economy and constitutional thought. Based on Hume's influence, Hamilton accepted commercial society as "inevitable and salutary." Inevitable also was the human disposition away from classical conceptions of virtue and toward luxury. Thus, Hamilton ultimately came to the conclusion that classical republican virtue was "hopelessly irrelevant" to the American experience. Therefore, he subscribed not to the same republican theories that glorified agrarian virtue as did Jefferson and Madison, but to the writings of Robert Morris, a financier and signer of the Declaration of Independence, who had created a "formula that integrated constitutional change with the funding

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<sup>48</sup> Smith, Adam. "Institutions for the Education of Youth." *An Inquiry into the Nature and Causes of the Wealth of Nations*. London: W. Strahan and T. Cadell, 1776. Print.

<sup>49</sup> Hamilton, Alexander. "As to the Division of Labor." *Report on the Subject of Manufactures*. 1791.

of the Revolutionary debt and a vigorous program of economic expansion tied to the consolidation and mobilization of mercantile capital.”<sup>50</sup>

More importantly, Hamilton did not share Madison and Jefferson’s sheer contempt for Great Britain and its economic policies. In fact, Hamilton wished for America to become much like the British state – a powerful economically advanced modern nation. He did not promote a virtuous agrarian republic in the least. His American republic could “stand squarely on the worldly foundations of ‘corruption,’” as did Great Britain. Therefore, the reality was that Hamilton’s political-economic objectives were not plagued with traditional republican fears that shaped Madison and Jefferson’s thinking. Hamilton acknowledged and accepted “social inequality, propertyless dependence,” and the unimpeded avarice that would emerge in and were necessary for a powerful and prosperous society.<sup>51</sup>

### *Legal Context- Leading Up to 1791*

The National Bank Debate also took place in the midst of a legal arena that pitted two differing constitutional interpretations against each other. Such were the arguments for an enumerated powers interpretation versus an implied powers view. The enumerated powers were located in Article 1, Section 8, and explicitly outlined all of the powers the Constitution granted to Congress. However throughout history, and especially as a result of Federal court decisions, these powers have been broadened to expand Congressional authority. This broadening has been based on what powers many judges and scholars believe the Founders had *implied* to grant to Congress, regardless of whether these were explicitly enumerated. Enumerated powers proponents, as Madison and Jefferson presented themselves to be in the Bank Debate, promoted

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<sup>50</sup> McCoy 132-133.

<sup>51</sup> Ibid.

the idea that Congress only had those powers that were listed in Article 1, Section 8 – no more, no less. Those like Hamilton who favored an implied powers interpretation asserted that the Constitution also implicitly allowed other Congressional powers, for example, the power of incorporating a Bank without an expressly written power to do so.

The two-sided argument also centered on the Necessary and Proper Clause of the Constitution (“The Congress shall have Power - To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof”). Some theorists explained that a correct interpretation of the clause granted Congress the power to make laws only if the lack of said laws would deprive it of the ability to carry out its enumerated powers. Their opponents however claimed that the Necessary and Proper Clause effectively expanded Congressional authority to include powers tangentially related to the enumerated powers. The distinct interpretations would clash heatedly in the National Bank Debate.<sup>52</sup>

### *Legal Context in 1791 - Argument Against the Bank*

While Hamilton’s preferences lay with an implied powers interpretation of the Constitution – one in which implicit justification for unwritten Congressional powers was quite enough – Madison and Jefferson insisted on the enumerated powers approach. They argued against Hamilton that to treat the power to establish a bank as an implied power resulting from the constitutional power to borrow (Necessary and Proper Clause) was “to take possession of a boundless field of power, no longer susceptible to any definition” or restriction.<sup>53</sup>

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<sup>52</sup> United States Constitution. 1 USC. Sec. 8. N.p., n.d. Web. 24 Mar. 2012.

<sup>53</sup> Staloff 314.

Madison's concerns lay with Hamilton's interpretation of the Necessary and Proper Clause partly because Hamilton's emphasis of abundant monetary supply as the best means for augmenting American manufactures gave Congress an almost unlimited power to interpret that clause. In Hamilton's own words, "it is... of necessity left to the discretion of the National legislation to pronounce upon the objects, which concern the general welfare, and for which under that description, an appropriation of money is requisite and proper." This Madison described as entirely incompatible with any sense of a limited republican government, corrupt, avaricious, and subversive of the public good. He wrote to Henry Lee of the dangers of such unrestricted power: "The federal Govt has been hitherto limited to the specified powers, by the Greatest Champions for Latitude in expounding those powers—If not only the *means*, but the *objects* are unlimited, the parchment had better be thrown into the fire at once."<sup>54</sup>

On the other side of the legal arena, Hamilton viewed the necessity for an implied powers approach as part of a political responsibility that he prioritized in every way. This responsibility demanded the belief that, in the context of constitutional powers, ought implied could. "If a government [was] to be charged with certain tasks and duties, it must be armed with the requisite authority and resources to discharge those duties." Hamilton was in the business of matching means to ends and not the other way around. In his own words, "every power ought to be commensurate with its object... there ought to be no limitation of a power destined to effect a purpose."<sup>55</sup>

Hamilton may have even given credence to Madison and Jefferson's concerns about tyrannical centralized government. Perhaps he was in no position to firmly disprove the idea that

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<sup>54</sup> Madison, James. Letter to Henry Lee. 1 Jan. 1792. *James Madison, The Writings*. By Gaillard Hunt. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012. McCoy 153-155.

<sup>55</sup> Staloff 75.

under a rare and dangerous set of conditions, a tyrant could emerge in America as a consequence of an overly centralized federal power. But this was unlikely, and while Madison and Jefferson feared hypothetical dangers, the pragmatic Hamilton worked to improve real and present economic inefficiencies: “the practice of mankind ought to have great weight against the theories of individuals.” Specifically, the practice of national banks was already a “widely accepted engine in the administration of national finances.” They were also the most effective method of providing loans without interfering with the states or the people. That is, states could still erect as many banks as they wanted, and any individual could still participate in banking to any degree that he desired. Whether the fact that a practice was widely held compensated for it potentially clashing with the Constitution did not worry Hamilton. His rule was simple: “If the end be clearly comprehended within any of the specified powers of the Constitution – in this case, the collection of taxes, regulation of trade, and procurement of credit – it may safely be deemed to come within the compass of national authority.”<sup>56</sup>

### **The Real National Bank Debate**

The reality is that when Madison and Jefferson embarked on the legal constitutional path to fighting Hamilton’s Bank, they also embarked on a path of insincerity and political maneuvering. Evidence indicates that their true objectives in opposing the Bank lay squarely in the political-economic realm, but their audience lay with President Washington, a man who genuinely cared about the legal significance of the Constitution. Madison and Jefferson could put their true concerns with the Bank on proud display, but the risk of losing the debate was too great if Washington was the judge. Ironically, they faltered regardless, and their legal ploy to

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<sup>56</sup> Staloff 118-119.

accuse the Bank of being unconstitutional was ineffective anyway. Perhaps they would have been better off with the political economy argument.

### *Correspondence*

Both Madison and Jefferson's correspondence with various politicians and with each other after the passage of the Bank bill is curious in light of their public insistence on its unconstitutionality. After a full year of rousing Congressional speeches and writings about the rampant disregard for the Constitution by Hamilton and his Bank bill, Madison was mostly quiet on anything but the Bank's economic flaws once it had passed. In the immediate decade after the Bank's passage, Madison emphasized the Bank's unconstitutionality infrequently in his significant reports. Once was in a February 1791 letter to Edmund Pendleton which simply and quickly summarized the Bill's presence in the hands of Washington and the points Madison made against it in his early February speeches to Congress. Another instance occurred in the 1799-1800 *Report on the Resolutions*, in which Madison amended and assuaged criticisms of the 1798 Virginia Resolutions. Madison raised a point, made by the Virginia General Assembly, which outlined how the government had forced certain Constitutional constructions on the American people in order to enlarge its own Federal powers. He mainly focused on the Alien and Sedition acts but mentioned the Bank as well: "Omitting others which have less occupied public attention, or been less extensively regarded as unconstitutional, the resolution [made by the General Assembly may] be presumed to refer particularly to the Bank law."<sup>57</sup> Thus, Madison was convinced that the General Assembly referred to the Bank bill when discussing constitutional overstepping by the government in the past. What is interesting here is that this

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<sup>57</sup> Madison, James. "Report on the Resolutions." 1799. *Online Library of Liberty*. Web. 1 Apr. 2012.

report focused mostly on the Alien and Sedition Acts, was written almost a decade after the Bank bill's passage, and is still one of the only significant mentions that Madison made about the Bank's unconstitutionality after its passage. The aforementioned references to the Bank by Madison are the only ones that allude to its unconstitutionality out of the total of seventeen Bank references he made in the decade after it passed in his reports and correspondence. This analysis is based on the compilation of Madison's writings, compiled by Gaillard Hunt in the early 1900s – an extensive nine-volume collection of Madison's writings.<sup>58</sup>

Madison's typical correspondence about the Bank in the years after its passage instead focused on its *economic* inadequacies, especially in writing to Thomas Jefferson. In 1793, Madison wrote to Jefferson about monied interests surrounding the Bank:

“It is said, that Marshal who is at the head of the great purchase from Fairfax, has lately obtained pecuniary aids from the Bank or people connected with it. I think it certain that he must have felt, in the moment of purchase an absolute dependence on the monied interest, which will explain him to everyone that reflects, in the active character he is assuming.”<sup>59</sup>

In an earlier letter, dated July 10, 1791, Madison complained of rising Bank shares that benefitted subscribers and financiers instead of the virtuous republican producers:

“The Bank shares have risen as much in the Market here as at Philadelphia. It seems admitted on all hands now that the plan of the institution gives a moral certainty of gain to the subscribers with scarce a physical possibility of loss.”<sup>60</sup>

At times Madison broadened his criticisms by going further than simply criticizing the Bank's economic consequences and related these consequences to societal corruption that so weighed on

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<sup>58</sup> James Madison, *The Writings of James Madison*, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed, ed. Gaillard Hunt (New York: G.P. Putnam's Sons, 1900). 9 vols.

Accessed from <http://oll.libertyfund.org/title/1933> on 2012-04-10

<sup>59</sup> Madison, James. Letter to Thomas Jefferson. 2 Sept. 1793. *James Madison, The Writings*. By Gaillard Hunt. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

<sup>60</sup> Madison, James. Letter to Thomas Jefferson. 10 July 1791. *James Madison, The Writings*. By Gaillard Hunt. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.



his mind during the Bank debate. Three days after the previous letter, Madison again wrote to Jefferson and explained the situation in Boston:

“We understand here that 800 shares in the Bank, committed by this city to Mr. Constable, have been excluded by the manner in which the business was conducted, that a considerable number from Boston met with the same fate, and that Baltimore has been kept out... It is all charged on the manoeuvres of Philada. which is said to have secured a majority of the whole to herself. The disappointed individuals are clamorous of course, and the language of the place marks a general indignation on the subject. If it should turn out that the cards were packed for the purpose of securing the game to Philada or even that more than half the Institution and of course the whole direction of it, have fallen into the hands of that City, some who have been loudest in their plaudits whilst they expected to share in the plunder, will be equally so in sounding the injustice of monopoly, and the danger of undue influence on the Government.”<sup>61</sup>

Other excerpts from Madison’s correspondence to Jefferson include an August 1791 letter describing the Bank as a “certain and gratuitous augmentation of the capitals subscribed,”<sup>62</sup> and an August 1793 letter discussing the “fiscal system, particularly the Bank.”<sup>63</sup> Clearly, the majority of Madison’s correspondence about the Bank centered around its economic aspects, which seems rather odd after his boisterous condemnations of it in the constitutional arena right before the Bank’s passage. Furthermore, the only three times that Madison touched on the Bank’s unconstitutionality, as outlined in the Hunt compilation, were when he wrote to someone other than Jefferson. In all of his correspondence with Jefferson about the Bank, Madison only mentioned economic factors. It seems strange that Madison would avoid discussing constitutional factors with the man that was his most important teammate in the fight to prove the Bank unconstitutional, unless constitutionality was not the true concern they shared in their opposition.

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<sup>61</sup> Madison, James. Letter to Thomas Jefferson. 13 July 1791. *James Madison, The Writings*. By Gaillard Hunt. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

<sup>62</sup> Madison, James. Letter to Thomas Jefferson. 8 Aug. 1791. *James Madison, The Writings*. By Gaillard Hunt. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

<sup>63</sup> Madison, James. Letter to Thomas Jefferson. 11 Aug. 1791. *James Madison, The Writings*. By Gaillard Hunt. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

To be sure, there was no official mode of redress at this time for overturning executive approved laws that some deemed unconstitutional. It may be true that Madison felt it useless to discuss the constitutional question involving the Bank because he did not know how to challenge Washington's opinion. Yet by including economic factors in his correspondence about the Bank, Madison demonstrated that he was not above complaining about aspects of a law that had already passed. If he did not see it as useless to express his economic concerns with the Bank, why would he deem it to be useless to express constitutional concerns?

Fueling the fire of suspicion are Jefferson's correspondences, which made *zero* references to the Bank's unconstitutionality in the years following its passage, based on an extensive 12-volume compilation of these correspondences by Paul Leicester Ford.<sup>64</sup> The only time Jefferson even came close to discussing government corruption in the legal realm in such a way as might have encompassed the Bank issue appeared in a February 1791 letter to George Mason, just prior to the Bank's passage. Perhaps referring to Hamilton, Jefferson said,

"It cannot be denied that we have among us a sect who [wish] to contain whatever is perfect in human institutions. ... I still rely that the great mass of our community is untainted with these heresies, as is its head."

Further in the letter, Jefferson bemoaned the effects of this corrupting sect and foresaw the consequences of its actions, which included a rather bleak and resigned prediction for the Bank:

"What is said in our country of the fiscal arrangements now going and I really fear their effect when I consider the present temper of the Southern states. Whether these measures be right or wrong abstractedly, more attention should be paid to the general opinion. However all will pass – the excise will pass – **the Bank will pass**. The only corrective of what is corrupt in our present form of government will be the augmentation of the numbers in the lower house, so as to get a more agricultural representation, which may put that interest above that of the stock-jobbers."<sup>65</sup>

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<sup>64</sup> Thomas Jefferson, *The Works of Thomas Jefferson, Federal Edition* (New York and London, G.P. Putnam's Sons, 1904-5). 12 vols.

Accessed from <http://oll.libertyfund.org/title/1734> on 2012-04-10

<sup>65</sup> Jefferson, Thomas. Letter to George Mason. 14 Feb. 1791. *Thomas Jefferson, The Works*. By Paul Leicester Ford. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

Here, Jefferson made two rather striking assertions. First, he stumbled in declaring “these measures” (the Bank among others) to be wrong in the abstract, and decided to leave it up to public opinion, which the government should listen to more. Here is a man who has been shouting about the Bank’s unconstitutionality, along with Madison, in the fervent months leading up to the signing of the Bank bill, and now he claims to be unsure of its abstract legitimacy.

Secondly, Jefferson appeared much more focused not on the Bank’s unconstitutionality and how the passage of an unconstitutional bill would corrupt government, but rather on government corruption resulting from a disproportionate North-South economic and representational divide. The Bank was a mere symptom of the favoritism that Northerners enjoyed over Southerners; it further enriched Northern financiers at the expense of Southern agricultural producers. To call it economically unsound would be to call the entire national system economically unsound, which Jefferson would not shy away from doing. However, this would not go over very well with the Northerners who benefitted from such a system. Although Jefferson may not have held these Northerners in high esteem, he must have known that Northern opposition to the Bank, in addition to already established Southern criticisms of the bill, would build a more convincing argument against the Bank in Washington’s eyes. Thus, alienating the Northern states by only presenting criticisms about how the Bank disparaged the South’s economy would not be the best strategy for Jefferson in this sense. But to take the strategy of calling the Bank *unconstitutional* was to call it so on a federal level, without state boundaries. Even Northerners could have been expected to look down upon an attack on the Constitution or to fear an overreaching federal government. Thus, it is reasonable to infer how Jefferson may have used the claim of the Bank’s unconstitutionality as an instrumental means

that would both prevent its passage and eliminate an obstacle to the South's economy, and it would do so by drawing in Northern criticisms of the Bank as well.

In a sense, Jefferson very subtly gave himself away in this letter to Mason. On the surface, his concerns with how the Bank would contribute to North-South inequalities might have seemed to be secondary concerns, especially when placed in the context of government corruption, which he outwardly claimed would result particularly from the passage of an unconstitutional bill. Yet this is an inverted perception of the meaning of Jefferson's words. The North-South economic disparities were Jefferson's primary concern (as will be shown below), and the Bank's unconstitutionality was only secondary – useful as a criticism in as much as it would relieve economic government favoritism toward the North at the expense of the South.

Continuing through Jefferson's 1791 correspondence, it becomes obvious that his letters to Madison were just as concerned with economic issues as Madison's were to him. Nowhere in these letters was the question of constitutionality brought to the forefront of discussion. In July, Jefferson wrote, "I inclose you a paper estimating the shares of the Bank," and explained that "many persons [have been] left in the lurch."<sup>66</sup> Later the same month he told Madison of Bank "subscriptions from Virginia," and how the Bank had "filled and overflowed."<sup>67</sup> In fact, unlike Madison who seemed to voice economic disapproval of the Bank only in his correspondence with Jefferson, Jefferson shared economic concerns with other people as well a few months after the bill's passage. To James Monroe he wrote in April,

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<sup>66</sup> Jefferson, Thomas. Letter to James Madison. 6 July 1791. *Thomas Jefferson, The Works*. By Paul Leicester Ford. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

<sup>67</sup> Jefferson, Thomas. Letter to George Mason. 10 July 1791. *Thomas Jefferson, The Works*. By Paul Leicester Ford. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

“Now schemes are on foot for bringing more paper to market by encouraging great manufacturing companies to form, and their actions, or paper-shares, to be transferrable as bank-stock. We are ruined, Sir, if we do not over rule the principles that ‘the more we owe, the more prosperous we shall be.’”<sup>68</sup>

To Edmund Pendleton, Jefferson wrote in July about a “delirium of speculation.”<sup>69</sup> He evidently had mostly economic concerns on his mind regarding the Bank, with literally no mention of its unconstitutionality.

Of course, none of this is surprising given that Madison and Jefferson always had truly serious economic concerns with the Bank bill, and they had always voiced these concerns. The peculiarity of the situation involving their correspondence is that they voiced constitutional concerns more loudly in the criticisms of the Bank that they presented to Washington, for example when he asked for his cabinet to write opinions on the subject. Suddenly, as soon as the Bill passed, these legal concerns fell by the wayside, or at least they seemed to judging by the correspondence record. The implication is that the Bank’s unconstitutionality was only a legal tool in preventing its passage, and not Madison and Jefferson’s major concern with the bill. This concern was economic.

### *February 8<sup>th</sup> Speech to Congress*

Madison’s speeches to Congress leading up to the Bank’s passing offer more evidence of the fact that his primary concern with the Bank was economic and not constitutional. At first this statement appears counterintuitive. After all, he made two speeches to Congress regarding the National Bank on February 2<sup>nd</sup> and February 8<sup>th</sup>, and they both heavily focused on the Bank’s unconstitutionality. The beginning of the Feb. 2<sup>nd</sup> Speech revolved around the economic

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<sup>68</sup> Jefferson, Thomas. Letter to James Monroe. 17 Apr. 1791. *Thomas Jefferson, The Works*. By Paul Leicester Ford. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

<sup>69</sup> Jefferson, Thomas. Letter to Edmund Pendleton. 24 July. 1791. *Thomas Jefferson, The Works*. By Paul Leicester Ford. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

deficiencies of the Bank bill. This is not surprising even if one is to believe that economic concerns were secondary in Madison's opposition since he was always vocal about having these concerns in the background of the constitutional debate. Then, most of the Feb. 2<sup>nd</sup> Speech turned to proving that the bill was indeed unconstitutional, based on the fact that the Constitution did not grant Congress any express power to incorporate a Bank.<sup>70</sup>

The Speech on Feb. 8<sup>th</sup> started in much the same way as the one on Feb. 2<sup>nd</sup> finished, and Madison once more outlined the unconstitutionality of the Bank bill. Toward the end of the Feb. 8<sup>th</sup> Speech however, Madison's words took an unexpected turn. He turned once more to economic problems with the Bank. Thus, Madison began and ended his vocal opposition to the Bank in front of Congress with economic criticisms. The impression he started with was economic, and the Congressmen would leave the assembly having last heard more economic considerations. Constitutional arguments, though taking up far more time than economic, were sandwiched between economic arguments. This was curious to say the least. Why would Madison not prefer that Congress leave the speech with constitutional concerns freshly in their minds instead of critical economic snippets thrown into the Speech at the end?<sup>71</sup>

However, to say the structure of the Speeches gives weight to the idea that Madison's primary concerns were economic would be a matter of opinion, however valid. It was an actual passage he uttered to conclude the Feb. 8<sup>th</sup> Speech, which draws the most suspicion about his emphasis of constitutional issues. After spending almost 5,000 words documenting the constitutional abuses perpetrated by the Bank Bill, Madison said the following:

"There are other defects in the bill, which render it proper and necessary, in my opinion, that it should undergo a revision and amendment before it passes into law. The power vested by the bill in the Executive

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<sup>70</sup> Madison, James. "Speeches in the First Congress." Congress. 2 Feb. 1791. *Online Library of Liberty*. Web. 1 Apr. 2012.

<sup>71</sup> Madison, James. "Speeches in the First Congress." Congress. 8 Feb. 1791. *Online Library of Liberty*. Web. 1 Apr. 2012.

to borrow of the Bank, he (Madison) thought was objectionable, and the right to establish subordinate banks ought not be delegated to any set of men under Heaven.”<sup>72</sup>

This quoted passage is surprising in light of what came before it in the Speech. If the Bill was as incontestably unconstitutional as Madison just finished explaining, how in the world could he imply that a revision or amendment to a few – seemingly economic – defects would make it passable into law? It seems as though this quoted set of lines was taken from a completely different speech on a completely different subject and glued into the Feb. 8<sup>th</sup> Speech, but indeed it was not. Even more shocking was that Madison would commit such a mistake – for it seems to be a grave error in judgment – to abandon a total opposition to the Bank and turn to compliance with the bill on the condition that the bill’s granted executive power to borrow money be removed. The only explanation for this utterance might just be that Madison could not hold his tongue and leave the floor without stressing his genuine economic qualms. Maybe he did not feel it as necessary to focus as much on constitutionality while addressing Congress as he would in addressing Washington, his main audience. Regardless, the conclusion to the Feb. 8<sup>th</sup> Speech was telling in regards to Madison’s opposition.

#### *Federalist 44*

A glaring indication that Madison demonstrated inconsistencies in his opposition of the Bank also lies in Federalist 44. During the Bank debate, Madison’s arguments certainly made it seem as if his constitutional criticisms were fundamental legal principles that he held in his heart. However, as it turns out, these principles were more recent than they were fundamental.

A major justification that Hamilton employed to legitimize the Bank’s legality was Federalist 44. The paper was very much legal in scope, and its principal part outlined the

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<sup>72</sup> Madison 8 Feb. 1791

meaning of the Necessary and Proper Clause. Federalist 44 described the clause as granting “the power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States or in any department or officer thereof.” Federalist 44 further absolutely legitimized the clause: “Few parts of the Constitution have been assailed with more intemperance than this; yet on a fair investigation of it, as has been shown, no part can appear more completely invulnerable.” The paper continued, “Without the *substance* of this power, the whole Constitution would be a dead letter. Those who object to the article, therefore, as a part of the Constitution, can only mean that the *form* of the provision is improper.”

Thus, Federalist 44 explained exactly what the Necessary and Proper Clause entailed and why it was a legitimate and necessary section of the Constitution. What is most important with respect to the National Bank Debate is how Federalist 44 applied the clause to the actual realities of the US government. It read, “No axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized; whenever a general power to do a thing is given, every particular power necessary for doing it, is included.”<sup>73</sup> It is clear now why Hamilton would use this assertion as justification for his Bank. If Congress possessed the enumerated power of borrowing money, and borrowing money was in this case a required end, the means of incorporating a Bank were authorized, regardless of whether other means to borrow were available. This approval for an “implied powers” constitutional outlook certainly pitted the author of Federalist 44 against the enumerated powers proponents in the two-sided divide over constitutional interpretation. The surprise is that the author of Federalist 44 was James Madison.

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<sup>73</sup> Madison, James. "Federalist 44." 25 Jan. 1788. *Online Library of Liberty*. Web. 2 Apr. 2012.



In fact, many did not even know of Madison's authorship during the Bank debate. Representative Elias Boudinot quoted Federalist 44 during a Congressional meeting, assuming Hamilton himself wrote it. How disconcerting it must have been for Madison to hear his own eloquent words used to justify the Bank that he now so fervently opposed without the need to twist these words or take them out of context in the least. It seemed almost as though he had written them to apply to situations like the Bank debate in the first place.

Of course, Madison attempted to defend himself by explaining that Hamilton had stretched his reasoning and exaggerated his intentions. Madison claimed that he never meant for Federalist 44 to apply to an endless chain of implied powers that justified any means to achieve a required end.<sup>74</sup> But in hindsight, this rings like a hollow qualification, raised when it was convenient for Madison to twist his own words in opposing the Bank bill. Federalist 44 was written with a firm and assertive tone, and it meticulously navigated through a set of four different scenarios to explain why the Necessary and Proper Clause was worded in the way that it was. These scenarios showed how any other method of including the Clause would have been insufficient. 1. Prohibiting the exercise of any Congressional power expressly delegated to it would have been too restrictive. 2. Positive enumeration would have been too exhausting as would 3. negative enumeration. 4. Lastly, silence on the subject of necessary and proper powers on the part of the framers would have given too much authority to the government.<sup>75</sup> Madison thoroughly explained these minute details, and it seems unlikely that he would not have included the qualifications that he later claimed to have intended during the Bank Debate.

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<sup>74</sup> Brookhiser 92-93.

<sup>75</sup> Madison. "Federalist 44."

Thus it seems that Madison's fundamental legal ideas were quite consistent with the incorporation of the National Bank, even though he claimed they were not. He must have had other, more genuine reasons to oppose it.

### *Scholars' Hints*

Although most scholarship on the National Bank Debate centers around the claim that Madison and Jefferson were most concerned with constitutionality, some authors have dropped various hints – whether conscious or not – about the true underlying causes of Madison and Jefferson's opposition. Drew McCoy is one such author. When he describes Madison's perception of a Hamiltonian constitutional system of interpretation, he does not represent this system as necessarily incompatible with American principles but rather as totally incompatible with *Madisonian* principles. Through this characterization of Madison's support for a strong enumerated powers approach, McCoy places such an approach into a chain of ideas that make up the Madisonian vision. The enumerated powers view becomes instrumental – a means to Madison's ends rather than his actual ends. Without it, Madison's vision cannot exist because this vision depends on anticorruption.

Specifically McCoy describes Madison's perception of Hamilton's constitutional doctrine as one that sees the doctrine to be “utterly incompatible with limited republican government... [a] corrupt, avaricious subversion of the public good.” By promoting the Hamiltonian doctrine, a “minority faction in control of the new federal government had arrogated to itself unlimited discretion in determining the scope of its operations.” Thus the issue of the Bank was only one part of a tremendous Madisonian fear of a corrupt government and an avaricious minority that would grow into a tyrannical majority. An implied powers doctrine of interpretation would be a

major obstacle to the Madisonian vision for the future for the young republic. Therefore, any constitutional opposition that Madison had to the Bank could be seen as the utilization of the Constitution as an instrumental means to achieving his overall political ends – these ends centering around anticorruption and a limited government.

At the same time, it is undeniable that even a genuine constitutional concern with the Bank could also be based on fears of a corrupt central government. After all, it is not enough to say that Madison encouraged an enumerated powers interpretation to avoid unlimited government power. This would not make his calls for the Bank's unconstitutionality disingenuous even if the Constitution were only a means to an end for him (an end of limited government). This situation would prove a legitimate legal concern for Madison. However, what makes Madison's constitutional claims insincere is that, in this particular context, his primary fears of unlimited government were economic fears. He was not as worried about federal tyranny as about economic corruption with respect to the Bank. This is indicated by his writings in Federalist 44. Hamilton found legal justification for the Bank in Madison's own words in Federalist 44 ("whenever the end is required, the means are authorized"). If Madison feared that such a corporation would lead to government tyranny, he would not have provided a legal foundation for such a corporation. Yet when he saw how one such corporation in particular, the Bank, could pose economic threats to his vision for the country, he suddenly voiced a strong opposition. The disingenuousness of this opposition lay in Madison's presentation of his argument. He hid his economic concerns under the guise of a legal argument. He claimed a fear of unlimited government power when he specifically meant economic corruption. When writing Federalist 44, perhaps he had not imagined how a corporation legally justified by this document could create economic conditions unfavorable to him. Thus, he wrote

it under a strictly legal mindset since Federalist 44 was a document about legal issues. Hence, legally he was fine with the Bank, but as he would discover later, he had economic qualms.

What were these qualms? An implied powers reading of the Bank bill would legalize and contribute to a corporation – in many ways a monopoly – that “instead of letting manufactures grow at their own pace, [would] ruin private ‘natural’ producers and foster dangerous, unrepublican disparities in wealth.” Privileged groups would then become totally dependent on the government for sustenance, and this would increase Hamilton’s corrupt influence while threatening the American republican government and social structure.<sup>76</sup> Here it is clear that the “operations” discussed above that Madison feared the government would determine for itself were economic operations. The corruption he feared was Hamilton’s economic corruption on a government that would become limitless. Therefore, according to this interpretation of McCoy, even if one is to give some credibility to Madison’s complaints of the Bank’s unconstitutionality, these legal constitutional concerns appear as part of a broader Madisonian political-economic framework that is incompatible with wealth inequalities and unrepublican ideals. Once more, his primary opposition to the Bank can ultimately be placed in the political-economic realm.

Brookhiser further echoes McCoy with his analysis of the Madisonian fears that hinged on the Bank bill. If the government legalized the Bank, “federalism’s slipshod lawmaking would ‘pave the way to monarchy.’ The President might even ‘regulate’ his successors in office ‘as he pleased.’”<sup>77</sup> To some, it may seem here that Madison was making robust exaggerations, but to him, a National Bank in the Hamiltonian form would bring about such horrors by further solidifying the corrupt, conspiratorial Hamilton as someone Washington trusted with lawmaking, and an implied powers approach was the stepping-stone for the entire system of corruption to

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<sup>76</sup> McCoy 148-153.

<sup>77</sup> Brookhiser 144.

come into effect. But, again, this stepping-stone was much smaller in scope than the political-economic system that it would support. The political-economic system is what would then destroy Madison's ambitions directly. Constitutionalism's effect on Madison's hopes was more indirect in this sense – or more secondary.

The same could be said for Jefferson in the sense that any true constitutional concerns he had with the Bank bill were based on an instrumental utilization of the Constitution to achieve his ultimate political-economic vision. As Staloff explains this time, "In Jefferson's new Romantic politics, principles were not means to ends – they were ends in themselves."<sup>78</sup> These ends were republican virtue, North-South equality, and anticorruption. Instead, the enumerated powers approach was the means. In fact, just as Brookhiser did with Madison, Staloff presents a chain of Jeffersonian ideas with an enumerated powers approach as a link in this chain, but not the end goal of it. Jefferson desired participatory democracy, which Staloff explains to require strict bounds of the power of the central government. An enumerated powers approach would keep federal power in check and keep the chain together.<sup>79</sup> But participatory democracy is the end here, not the enumerated powers interpretation itself.

Finally, Merrill Peterson makes a remarkable hint at Jefferson's disingenuousness in making constitutional claims about the Bank bill. He writes, "Jefferson would almost certainly not have enunciated such a niggardly view of federal powers had he approved of the Bank as a financial institution."<sup>80</sup> Peterson also claims that most alarming for Jefferson was the Bank's *charter*, not its lack of constitutional legitimacy. Thus, it is clear that although most scholarship

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<sup>78</sup> Staloff 294.

<sup>79</sup> Staloff 310.

<sup>80</sup> Peterson 435.

on the National Bank Debate claims Madison and Jefferson's assertions of unconstitutionality to be sincere, some scholars have stepped outside this analytical box in the past century.

### *Jefferson and the North-South Divide*

It is likely that, in broad terms, Jefferson's greatest concern with the Bank was a North-South ideological and economic divide, as he specified in the correspondence with Mason. This tremendous split between ideologies was in full view during the time of the Bank Debate, and Jefferson was the leading voice of the Southern Republicans against Northern commercialism. Southerners rallied around Jefferson's economic perspective that "the world of the early Republic ought to belong to people who lived by manual labor and not by their wits" (or apparently people who lived by the manual labor of others, whom they owned as slaves). He asserted that cities were dangerous because in them, "men sought 'to live by their heads rather than their hands.'"<sup>81</sup>

James Rogers Sharp presents a fantastic description of the tensions that thus arose between the North and the South Jeffersonian Republicans. "The overwhelmingly rural and isolated Southern society, with its plantation economy based on slave labor and its local elite-controlled institutions, contrasted sharply with New England." Therefore, the South did not like the puritan North dictating what was an acceptable method of economic gain, particularly when the question turned to slavery. After all, slavery and republicanism were tightly connected in the South. "Slavery ... could elevate white citizens of the republic to a level where they would be able to be autonomous, independent, and virtuous, qualities that were essential to preserving the republic." In this sense, the Federalist-Republican divide that would continue to grow out of this

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<sup>81</sup> Wood, Gordon S. "Republican Society." *Empire of Liberty*. Oxford: Oxford University Press, 2009. 351. Print.

North-South tension into a widely perceived difference in party ideology (after about the year 1792) was not so much party ideology at all, but rather a “manifestation of sectional strife.” Jefferson himself characterized the South’s Republican interest as “primarily sectionally grounded.”<sup>82</sup>

How did this sectional strife apply to the Bank bill? The corrupt commercialization of the Bank would destroy the very core of a Southern agrarian republic. Although Jefferson espoused the virtue of the virtually incorruptible yeomen of the South, he nonetheless feared a National Bank because it could lead to dependence, - a significant republican concern. According to Jefferson, “dependence begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of ambition.” Moreover, the debt created by the Bank would compromise personal autonomy and independence. Meanwhile, the South absolutely had to remain autonomous and independent to maintain its way of republican life. If a National Bank imposed government dependence on the Southern part of the Union, Jefferson feared commercialism would sweep away the agrarian Southern character and leave only corruption and vice.<sup>83</sup>

Consequently, he saw the Bank as sectionally biased. The context surrounding the Bank was one that indicated that the Federal government had become a sort of “court of last resort” which had the final voice on such legislative issues, including ones that could hamper the economic productivity of the South. In this sense, the new political system silenced local voices. A strong Federal system could work if it acted for the general good of all localities, but was this possible when Virginia and Massachusetts had strikingly different conceptions of what the general good was? Now, Virginia and the South had to live with a Bank bill that they absolutely

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<sup>82</sup> Sharp. 23. 158-159.

<sup>83</sup> Sharp 38-41.

did not approve of, and they could not handle their powerlessness. As Paul Goodman explains, “groups used to getting their way at home were unused to being thwarted in the new arena.”

Sharp concludes that, “it was particularly easy for the Virginians, as residents of the largest and most powerful state, to conclude [that the ‘general welfare’ was being sacrificed to faction].”<sup>84</sup>

And Jefferson spoke for these Virginians. Therefore as a champion for this cause and a fervent supporter of the idea that the South was constantly put at a disadvantage by federal policies that favored the Northern economy – especially in light of the mentioned reasons to believe Jefferson’s constitutional claims against the Bank were insincere – it is reasonable to say that Jefferson’s gravest concern with the Bank was that it further promoted an unfair North-South divide.

### *Washington as an Audience*

Realistically, it would be much more plausible that Madison and Jefferson utilized constitutional arguments against the Bank as a legal ploy, when they had other primary concerns, if there was a reasonable motive for them to do so. As a matter of fact, there was, and it had to do with their audience. Although the Bank bill initially lay in the hands of and was then passed by Congress, the decision ultimately lay in the hands of the President under the power of the Presidential Veto. In calling the Bank bill unconstitutional, Madison and Jefferson would arguably trigger a bigger red flag for Washington than by simply calling the bill economically unsound. Under this pretext, Washington faced the threat of not merely signing an unsound bill into law but an *illegal* one that might reflect disastrously on his reputation. Furthermore, Washington’s previous disposition toward Madison and Hamilton made it likelier that he would

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<sup>84</sup> Sharp 38-41.



trust Madison more with legal concerns and Hamilton more with economic ideas. Finally, Washington would not be very keen in taking Jefferson's concerns with sectional strife into account.

Elected as President in 1789, George Washington was a man intensely devoted to the Constitution if for no other reason than to assuage public fears of a monarchical leader – much like the one in Britain – that snubbed national law. In one sense, much of the nation already had a favorable attitude toward Washington that precluded any suspicions that he would take unlimited control of the government and turn it into a monarchy. Gordon Wood explains, “Washington’s unanimous election as President was preordained. He was the only person in the country who automatically commanded the allegiance of all the people. He was probably the only American who possessed the dignity, patience, restraint, and reputation for republican virtue...” He had always resisted any temptation to become a quasi-King or dictator (as some even wished that he might) and, even in his days of military glory, had always respected civilian superiority over army power. In fact, after rising to the status of national hero after his gallantry in the Revolutionary War, Washington promised to forego “any share in public business hereafter.” Wood describes the groundbreaking significance of this promise: “This self-conscious retirement from public life had electrified the world. All previous victorious generals in modern times – Cromwell, William of Orange, Marlborough – had sought political rewards... But not Washington. He seemed to epitomize public virtue and the proper character of a republican leader.”<sup>85</sup>

Yet as history holds, Washington did not keep his promise and would become the first President of the United States a few years later. There he found himself in a peculiar and tense

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<sup>85</sup> Wood 73.

position. Although the nation held him in high esteem and trusted his lack of interest in seizing monarchical power, they could not have trusted his successors to be as selfless. Every day, Washington confronted public sentiment that wavered between proclaiming him a “King, under a different name,” (as soon to be Secretary of War, James MacHenry said) and begging him not to be a King so that the next line of Presidents would not abuse the title. Washington grew extremely eager to cast away any doubt of his lack of interest in excessive political power. He tried to refuse a Presidential salary and emphasized his distaste for office.<sup>86</sup> He also understood that precedent was all-important. Washington asserted, “many things which appear of little importance in themselves and at the beginning, may have great and durable consequences for their having been established at the commencement of a new general Government.” The position of President had to be thus confined that even men who were not as honorable as Washington would not have the ability to turn it into a dictatorship in the future.<sup>87</sup>

Thus, it would be reasonable for Madison and Jefferson to predict that a constitutional argument would make Washington much more cautious in considering the Bank bill. The President would be meticulously aware of the danger in acting contrarily to the Constitution and thereby exercising excessive executive power in an unrestricted, monarchical fashion. For a man with such a strong determination to avoid any abuse of political power and to demonstrate the utmost loyalty to national law and power restrictions, risking an unconstitutional action was equivalent to playing with fire.

For Madison and Jefferson, these expectations of Washington’s political fears and leanings would have been confirmed with his frequent proclamations of a fierce loyalty to the Constitution. In a way, Washington’s national standing was intimately tied with the

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<sup>86</sup> Wood 74-76; Sharp 27.

<sup>87</sup> Wood 88.

Constitution. Sharp explains that “despite the Antifederalists’ strenuous opposition and deep apprehensions, the Constitution had been ratified, perhaps in large part due to the popular perception that Washington would consent to be the first President.”<sup>88</sup> Now that he was indeed President, Washington would not break his allegiance to the document. The President’s personal correspondences and Congressional speeches provide evidence of this fact. To Attorney-General Edmund Randolph he wrote in 1790, “the Constitution of the United States and the laws made under it must mark the line of my official conduct.”<sup>89</sup> In 1791, just before the signing the Bank bill, Washington asked Hamilton to write a report outlining his argument for the Bank’s constitutionality. Clearly, the matter was important to the President: “The constitutionality of [the Bank] is objected. It therefore becomes more particularly my duty to examine the ground on which the objection is built.”<sup>90</sup> It was Washington’s “duty” to evaluate constitutional objections, and his duty overall to defend the Constitution.

Later in 1791, Washington made a speech to Congress, once more greatly exalting the qualities of the Constitution. He spoke of the “happy effects of that revival of confidence, public as well as private, to which the Constitution and laws of the US have so eminently contributed.” He followed with the following assertion: “It is desirable, on all occasions, to unite with a steady and firm adherence to constitutional and necessary acts of government.”<sup>91</sup> Writing to Hamilton again in September of 1792, Washington remained steadfast in his loyalty to the document: “the

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<sup>88</sup> Sharp 27.

<sup>89</sup> Washington, George. Letter to Edmund Randolph. 11 Feb. 1790. *The Writings of George Washington*. By Worthington Chauncey Ford. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

<sup>90</sup> Washington, George. Letter to Alexander Hamilton. 16 Feb. 1791. *The Writings of George Washington*. By Worthington Chauncey Ford. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012.

<sup>91</sup> Washington, George. “Speeches to Both Houses of Congress.” Congress. 25 Oct. 1791. *Online Library of Liberty*. Web. 1 Apr. 2012.

Constitution and laws must strictly govern...”<sup>92</sup> Finally, Washington’s correspondence indicated that he also valued loyalty to the Constitution from others. In a private letter, he reassured his recipient that he acknowledged this person’s constitutional commitment: “I did not require the evidence of the extracts, which you enclosed to me, to convince me of your attachment to the Constitution of the United States, or of your disposition to promote the general welfare of this country.”<sup>93</sup> It may be inferred here that Washington even equates a constitutional loyalty to promoting the general welfare of the US, placing his opinion of the Constitution on a very high tier of priorities. If Madison and Jefferson knew about Washington’s strong adherence to and praise for the Constitution – and they certainly did as they interacted with the President often – they must have felt that a constitutional argument against the Bank would most catch Washington’s attention and, they must have hoped, his rejection.

Moreover, Washington’s attitude toward Madison and Hamilton respectively, along with Madison’s perception of Washington himself, would have prompted Madison’s eagerness to engage Hamilton in a constitutional battle rather than an economic one. Madison and Washington had become good friends prior to Washington’s ascension to the Presidency. In 1785, they had grown very close over the chartering of the Potomac River Company when Washington described Madison’s judgment as “the best guide” on the matter.<sup>94</sup> As Washington began his Presidency, Madison had the opportunity to return the favor by praising his new leader and firmly proclaiming his trust in him. While many feared a monarch in the form of a

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<sup>92</sup> Washington, George. Letter to Alexander Hamilton. 16 Sept. 1792. *The Writings of George Washington*. By Worthington Chauncey Ford. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012

<sup>93</sup> Washington, George. Private Letter. 18 Oct. 1792. *The Writings of George Washington*. By Worthington Chauncey Ford. N.p.: n.p., n.d. N. pag. *Online Library of Liberty*. Web. 1 Apr. 2012

<sup>94</sup> Brookhiser 44-45.

President, Madison saw Washington as totally faithful to the law. Wood explains, “Trusting Washington as he did, Madison ... brought the members of the House around to accepting the idea of a strong and independent President, one who had full responsibility for seeing that the laws were faithfully executed.”<sup>95</sup> Approximately two years later, during the National Bank Debate, Madison still saw Washington as a patriot who adhered to the Constitution according to his duty. More importantly, Washington now thought the same of Madison, for whom he had an “immense respect.” In fact, Washington now regarded Madison as the “leading light on the Constitution.”<sup>96</sup> Therein lay the key for Madison’s strategy in opposing the Bank, for if Madison was the constitutional expert and claimed the Bank to be unconstitutional, Washington would likely be swayed by this assertion.

It is worth mentioning that not only was the constitutional argument more promising for Madison in this regard, but the economic argument was also likely to fail. When Congress had created the National Treasury Department, it made no mention of the President regulating the department’s powers. Instead, the Secretary of the Treasury would report directly to Congress. As a result, wishing to respect the desire of the legislature, Washington typically abstained from interfering with Hamilton’s affairs. He was much less likely to encroach on Hamilton’s economic plans than he was to meddle in the business of his other cabinet members.<sup>97</sup> Madison may not have felt as confident in asking Washington to oppose Hamilton’s economic ideas as in asking Washington to consider Madison’s own constitutional concerns. Yet he did not envision that Hamilton’s response to Madison and Jefferson’s opposition to the Bank would be enough to

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<sup>95</sup> Wood 87.

<sup>96</sup> Staloff 117.

<sup>97</sup> Wood 91.

overturn legal criticisms while affirming the economic principles over which Washington gave Hamilton free rein as usual.

Finally, it is likely that Jefferson also felt that his best argument against the Bank with Washington as his audience was the constitutional one because his greatest economic concern – the Bank’s contribution to federal favoritism toward the Northern economy over Southern agriculture – would have made little impact on the President. In his inaugural address, Washington “pleaded for unity, beseeching Congress to shed ‘local prejudice or attachments,’ to hold ‘not separate views,’ and to avoid ‘party animosities.’” With this statement and later assertions, Washington firmly placed himself “above petty personal, local, and sectional interests.” In addition to disliking having to deal with sectional strife, Washington preferred to act as though it did not exist, at least not to the extent that ruthlessly plagued Jefferson. During a 1791 trip through the South, Washington said, “tranquility reigns among the [Southern] people, with that disposition towards the general government which is likely to preserve it.”<sup>98</sup> This perspective came into sharp contrast with Jefferson’s perception of a victimized South, abandoned by the federal government in favor of corrupt Northern financiers and manufacturers. Consequently, an argument targeting the sectional disparities that would result from the National Bank would not seem likely to be effective for Jefferson in presenting his arguments to Washington. The most promising plan for Madison and Jefferson remained the constitutional argument even if it was not their most sincere or significant one.

## **Conclusion**

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<sup>98</sup> Sharp 27, 54.

As debates over legislative constitutionality continue today, we see that the tradition of legal constitutional supremacy lies in the 1790s National Bank Debate. Madison and Jefferson voiced a strong opposition against Hamilton's Bank, which the Secretary of the Treasury believed would strengthen and improve the American economy. Most historians and scholars today attribute Madison and Jefferson's criticisms of the bill to their belief that it was unconstitutional. However, this view is incorrect in light of evidence such as Madison and Jefferson's correspondences, economic beliefs, and previous legal writings. In fact, it is a likelier story that Madison and Jefferson chose the argument of unconstitutionality as a legal ploy to convince President Washington to veto the Bank bill. In the end, however, he sided with Hamilton.

The National Bank Debate thus serves as a symbol of a false tradition. The idea that government officials cared passionately and deeply for the Constitution as a supreme source of legal authority was ingrained in American ideology at least in part because of the constitutional claims Madison and Jefferson made in this debate. If they were insincere, this historical event is just as much a mark of deception as it is of tradition. Hence it is important for today's American politicians and citizens to take a more critical look into history and present times alike.

Various political groups throughout the nation currently take a firm stance against judicial activism, and this is clearly evident in the case against President Obama's national health care reform bill. Many urge the Supreme Court to strike down the bill if it finds it unconstitutional even if the justices personally support Obama's policy. The idea of twisting the meaning of the Constitution to fit one's personal political motivations is certainly frowned upon in American society. Meanwhile, politicians and scholars call for meticulous examination of the

American Founders' intentions in writing the Constitution in order to ensure that today's leaders will not get away with misreading the document for their personal gain.

Yet what this study uncovers and solidifies is that our Founding Fathers engaged in this less-than-admirable practice of intentional constitutional misinterpretation themselves. In this sense, they were not more dishonest than today's politicians, but they also were not the shining beacon of honesty that many consider them to have been. Judicial activism and intentional constitutional misinterpretation may be troubling and legally harmful in themselves. But Americans should start analyzing such actions on their own terms instead of begrudging the judicial or executive activist because he/she breaks with the traditions established by the Founders. These traditions – the fundamental constitutional core of American society – were just as swamped in disingenuousness, as exemplified by Madison and Jefferson's opposition to the National Bank in 1791. Let us look to history and not only learn honesty and working for the collective American good, but also how to avoid political deception and personal gain, for there was plenty of that during the American founding as well.

Indeed, if we take the National Bank Debate into consideration, we can see that the Constitution was used as a *political* tool from its very creation. It served as a smokescreen even for the Founders in their quests to achieve their personal political goals. Americans frequently contrast the nation today with the US of the late eighteenth century and claim that, as a country, we have forgotten the true meaning of the Constitution – that we have disobeyed the authority of the Founders. Yet this study shows that the Founders were in the business of masking the Constitution's true meaning themselves, whenever it suited their ambitions.